

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANTHONY A. HAMILTON)	
Claimant)	
VS.)	
)	Docket Nos. 236,596; 184,294;
)	175,221; & 172,437
BUSINESS SYSTEMS, INC.)	
Respondent)	
AND)	
)	
U.S. FIRE INSURANCE COMPANY)	
CNA INSURANCE COMPANIES)	
Insurance Carriers)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and its insurance carrier, CNA Insurance Companies, requested Appeals Board review of Administrative Law Judge John D. Clark's preliminary hearing Order dated November 17, 1998.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment, temporary total disability benefits, and payment of all medical expenses incurred for treatment of injuries to claimant's neck and low back.

Respondent and its insurance carrier, CNA Insurance Companies (CNA), contend that claimant failed to prove he suffered an accidental injury arising out of and in the course of his employment with respondent on each and every day through July 13, 1998. Furthermore, the respondent and CNA argue claimant failed to prove he provided respondent with timely notice of accident. Finally, the respondent and CNA question whether claimant is entitled to temporary total disability and medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the briefs of the parties, the Appeals Board finds and concludes as follows:

K.S.A. 1997 Supp. 44-534a(a) grants the Appeals Board jurisdiction to review preliminary hearing issues of whether claimant suffered a work related accident and whether claimant gave respondent timely notice of the accident. However, the Appeals Board does not have jurisdiction to review the decision of the Administrative Law Judge that claimant is entitled to temporary total disability or medical benefits. See Rembold v. R. Vickers Trucking, Inc., Docket No. 223,206 (September 1997).

This case involves four separate docketed claims with four separate alleged dates of accident as follows:

<u>Docket No.</u>	<u>Date of Accident</u>	<u>Injury</u>
172,437	April 3, 1989	Neck
175,221	October 1, 1992	Neck & Low Back
184,294	February 1993	Neck, Shoulder, & Low Back
236,596	July 13, 1998	Neck, Shoulder, & Low Back

Claimant was originally injured while working for the respondent on April 3, 1989. Claimant received medical treatment for this injury and was diagnosed with a bulging disc at C6-7 with central spinal stenosis and foraminal stenosis. On June 19, 1989, Paul S. Stein, M.D., performed a C6-7 discectomy and fusion. Claimant returned to work with lifting, bending, and twisting restrictions on November 20, 1989.

Claimant settled all issues of under Docket No. 172,437 except for future medical treatment on October 6, 1995, for lump sum amount of \$14,442.28.

On June 6, 1996, a regular hearing was held on the 175,221 and 184,294 docketed claims but no award has been entered as of November 12, 1998, the date of this preliminary hearing.

As clarified in the November 12, 1998, preliminary hearing transcript, this preliminary hearing involves not only the issues relating to the unresolved claims but also a claim for post award future medical treatment as the result of the April 3, 1989, accident in Docket No. 172,437.

After claimant's initial April 3, 1989, injury, claimant testified he remained symptomatic but was able to continue to work until the symptoms became so severe that he could not tolerate the pain in July 1998. He returned to see Leonard A. Klafta, M.D., who had examined claimant in 1994 and 1995 at the request of respondent's insurance carrier.

In 1994, Dr. Klafta had a myelogram performed followed by a CT scan and found definite lumbar spinal stenosis at the L4-L5 level. In addition, the doctor found significant spondylosis associated with some disc bulging at C5-C6. Claimant had reported increased low back pain when a customer struck him in the back with a shopping cart while he was working in October 1992. In a letter dated February 22, 1995, Dr. Klafta related claimant's low back problems to the October 1992 accident but opined that his neck problems were all related to the April 3, 1989, accident.

Dr. Klafta performed surgery on claimant's low back on July 14, 1998, and on his cervical spine on September 24, 1998. In a letter signed by Dr. Klafta on October 21, 1998, he related claimant's current cervical problems again to the April 3, 1989, accident, and he further believed the claimant's work activities were a possible aggravating factor causing claimant's low back problem.

Respondent and CNA argue that claimant's need for the two surgical procedures performed by Dr. Klafta are the result of the original April 3, 1989, accident. They point to claimant's testimony that after the first cervical surgery in 1989 he was never symptom free. Although he did not receive any treatment, claimant also testified that his low back was symptomatic in 1989.

Claimant argues that his regular work activities continued to aggravate both his preexisting neck and low back condition to the point he could no longer tolerate the pain in July 1998. Dr. Klafta found surgical intervention necessary to relieve claimant's pain and discomfort in both his low back and neck. Accordingly, claimant argues respondent is responsible for Dr. Klafta's medical treatment and he is also entitled to temporary total disability benefits because he has been disabled from work since July 14, 1998, the date Dr. Klafta performed the first surgery on his low back.

Respondent's insurance carrier, U.S. Fire Insurance Company, which provided insurance coverage during claimant's April 3, 1989, accident, also was party to this preliminary hearing. It argues that neither claimant's current neck or low back problems are associated with the April 3, 1989, accident. The insurance carrier points out that claimant's first neck injury involved a herniated disc at C6-7. As a result of that herniation claimant underwent a C6-7 anterior discectomy and fusion. The current surgery performed by Dr. Klafta involved the C5-C6 level and not the C6-C7 level. Additionally, claimant did not make a claim and was not treated for a low back injury resulting from the April 3, 1989, accident. Therefore, the future medical award contained in the settlement of Docket No. 172,437 does not include claimant's low back.

The Appeals Board finds that claimant's testimony and the medical reports of Dr. Klafta prove that claimant's present neck problem is the natural and probable consequence of claimant's original April 3, 1989, accident. However, in regard to claimant's low back problem and need for medical treatment, the Appeals Board finds the record supports the conclusion that claimant originally injured his low back in October 1992 and his continuing work activities have aggravated this condition to the point Dr. Klafta's surgical intervention was necessary.

In regard to notice, the Appeals Board finds claimant provided respondent with timely notice of his low back injury in October of 1992 and since that time he has continued to tell his supervisor that his back was worsening as he continue to work through July 13, 1998.

The preliminary hearing record established that U.S. Fire Insurance Company's coverage terminated as of May 31, 1990, and CNA coverage started June 1, 1990. Accordingly, the Appeals Board finds U.S. Fire Insurance Company should be responsible for payment of the medical care and treatment for claimant's neck problem and CNA should be responsible for payment of the medical care and treatment for claimant's low back problem. The payment of temporary total disability benefits should also be the responsibility of CNA because U.S. Fire Insurance Company's future responsibility was limited to future medical treatment as set forth in the settlement agreement.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's preliminary hearing Order dated November 17, 1998, should be, and is hereby modified.

Respondent and its insurance carrier, U.S. Fire Insurance Company, are ordered to provide claimant with medical treatment through Leonard A. Klafta, M.D., for his neck problem which includes payment of all past medical expenses.

Respondent and its insurance carrier, CNA, are ordered to provide claimant with medical treatment through Leonard A. Klafta, M.D., for his low back problem which includes all past medical expenses. Respondent and its insurance carrier, CNA, are also responsible for the payment of temporary total disability benefits beginning July 14, 1998, and until released or further order at the weekly rate of \$365.34.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
Frederick G. Thompson, IV, Kansas City, MO
D. Steven Marsh, Wichita, KS
Chris S. Cole, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director